

October 7, 2008

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, DC 20554

Re: *In re Amendment of Parts 73 & 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations, and to Amend Rules for Digital Class A Television Stations*, MB Dkt. No. 03-185; *In re Carriage of Digital Television Broadcast Signals*, CS Dkt. No. 98-120; *In re Promoting Diversification of Ownership in the Broadcasting Services*, MB Dkt. No. 07-294.

Dear Ms. Dortch,

Representatives of Comcast Corporation ("Comcast") met on October 6, 2008, with Rosemary Harold, Legal Advisor for Media Issues to Commissioner Robert M. McDowell, and on October 7, 2008, with Amy Blankenship, Legal Advisor to Commissioner Deborah Taylor Tate, regarding the above-captioned proceedings. Comcast was represented in these meetings by James R. Coltharp of Comcast, and Jim Casserly and me, of Willkie Farr & Gallagher LLP.

During both of these conversations, Comcast's representatives explained that there is no legal or policy basis for increasing must-carry burdens on cable operators and that consideration of additional must-carry proposals is counter-productive, especially at a time when energies must be focused on effectuating a successful broadcast DTV transition. We noted that even single-channel must-carry for full-power stations now is of dubious constitutional validity, given that it rested on factual findings made in 1992 that are no longer true, and that any expansion of must-carry requirements could result in all must-carry requirements being invalidated. These points are further detailed in the attached handout (see Attachment A), which was distributed at the meetings.

Sections 614 and 336 of the Communications Act were referenced during the meetings (see Attachments B and C). In Section 614, Congress narrowly defined under what circumstances carriage of broadcast stations, including low-power ("LPTV") stations, is mandated on cable systems. Expansion of must-carry obligations, either to entities leasing excess broadcast capacity pursuant to a spectrum leasing scheme or to Class A stations that would not otherwise be entitled to carriage as a

low-power station, would directly contravene the express language of the Act and exceed the Commission's statutory authority. Without a change in the statute, the Commission does not have authority to expand must-carry burdens.

Section 614(c)(1) makes clear that cable operators may never be required to carry more than two qualified LPTV stations on any single cable system, and Section 614(h)(2) makes clear that *no* LPTV station is entitled to must-carry unless it meets each of six independent statutory requirements. Although Section 614(c)(2) permits a franchise authority to allow one of the two LPTV stations that qualify for must-carry to be carried on a cable system in capacity assigned to a public, educational, and governmental channel, the Commission, we explained, is not a franchising authority, and this paragraph does not authorize the Commission to establish requirements to carry channels that are not required by statute to be carried.

With respect to Section 336, the language in subsection (f) is clear: Congress created a one-time opportunity for qualified low-power television stations to seek designation as Class A stations, which entitles those stations to increased protection against interference from other broadcasters. However, Class A status *does not* entitle an LPTV station to any greater must-carry rights than other LPTV stations are granted by Section 614(c)(1) and (h)(2). The Commission definitely resolved this issue in a 2001 decision.¹ As NCTA recently explained, granting Class A stations must-carry status by reclassifying them as "full power" stations would also run afoul of the statutory language:

[Section 614 of the] Act confers must-carry status on two categories of television stations – "local commercial television stations" and "qualified low power stations." Local commercial stations are, by definition, "full power" stations, and do not include "low power television stations . . . which operate pursuant to part 74 of title 47 . . . or any successor regulations thereto." Class A licenses are, by [Section 336 of the Act], available only to "licensees of qualifying low power television stations," and the Commission has already rightly determined that its rules governing Class A stations, while codified in part 73 of the rules, are, indeed, "successor regulations" to the part 74 rules that previously applied to those stations.²

We also noted that Comcast voluntarily carries over 100 Class A and other LPTV stations that it believes its customers value, including a significant number of Spanish-language, multicultural, and religious LPTV stations. In this regard, we noted that a coalition of 31 groups, the "Diversity and Competition Supporters," recently advised the Commission that "[m]any - perhaps most - Class A stations broadcast only minimal local programming and no multicultural programming, and thus offer the public little in the way of diversity of viewpoints and information."³ Similarly, as we noted in

¹ See *In re Establishment of a Class A Television Service*, Memorandum Opinion & Order on Reconsideration, 16 FCC Rcd 8244 ¶¶ 37-43 (2001) (the relevant language is attached as Attachment D).

² Reply Comments of NCTA, filed in MB Dkt. No. 07-294 at 2 (Aug. 29, 2008); see also 47 U.S.C. §§ 336 & 534; *In re Establishment of a Class A Television Service*, 16 FCC Rcd ¶¶ 37-43.

³ Comments of Diversity and Competition Supporters, filed in MB Dkt. No. 07-294 at 23 (July 30, 2008) (the relevant language is attached as Attachment E).

communications with the Commission late last year, spectrum leasing proposals with a must-carry component will harm diversity, not promote it.⁴

Finally, we noted that the principal trade association of LPTV broadcasters has advised the Commission that “most Class A and [other] LPTV stations rely almost exclusively on over-the-air reception to reach their audiences.”⁵ We pointed out that preserving the relationships between these broadcasters and their audiences necessarily hinges on addressing over-the-air issues -- like ensuring the availability of DTV converter boxes with analog pass-through -- rather than considering new, unlawful, and unnecessary burdens on cable operators.

The attached documents were referenced in our meetings. Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Stephanie L. Podey

Stephanie L. Podey

Counsel for Comcast Corporation

Attachment

ccs: Rosemary Harold
Amy Blankenship

⁴ See Letter from James L. Casserly, Counsel to Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, filed in CS Dkt. No. 98-120 (Dec. 11, 2007) (attached as Attachment F).

⁵ Comments of the Community Broadcasters Association, filed in MB Dkt. No. 07-148, at 2 (Sept. 17, 2007) (the relevant language is attached as Attachment G).

ATTACHMENT A

**THERE IS NO BASIS FOR IMPOSING MORE MUST-CARRY BURDENS ON CABLE.
REOPENING MUST-CARRY FOR LPTV HURTS THE DTV TRANSITION.**

The broadcast digital transition is at a critical phase. This is no time for diversions or missteps. More must-carry debates are unjustified and counter-productive.

- Massive consumer education campaigns have been launched by cable operators, broadcasters, consumer electronics manufacturers and retailers, and the government. Consumers still haven't all gotten the message, and continuing changes increase risks of consumer confusion.
- Broadcasters and MVPDs are busy coordinating crucial issues such as digital signal strength, formatting of digital signals, timing of analog shutdowns and curtailments, and other changes. This is extremely complicated, and everyone is already working overtime to get it right.
- Meanwhile, the FCC has yet to complete many tasks that are essential to a successful transition, including: (1) overseeing the construction and launch of all digital broadcast facilities, (2) adopting meaningful public interest requirements for digital broadcasting, and (3) completing a schedule for digital conversion of low-power and translator stations. Commissioner Copps has identified a new list of important tasks to complete, including to: conduct additional field testing, prepare comprehensive DTV contingency plans, educate consumers on DTV troubleshooting, and find a way to broadcast an analog message to consumers following the transition.
- The margin of error is very thin. A timely transition could be jeopardized if any of the tasks above are not completed promptly and properly. Debating new and unnecessary must-carry burdens that will not survive judicial review generates unnecessary turmoil, impeding crucial planning and creating false expectations.

LPTV cannot properly be granted must-carry rights.

- Congress deliberately gave LPTV stations -- including Class A stations -- extremely limited must-carry rights. Only Congress can change the law. (And the law created a *one-time* opportunity for LPTV stations to claim Class A status. That door has closed.) As comments filed just weeks ago confirm, the FCC does not have the authority necessary to expand must-carry rights for LPTV stations.
- The must-carry regime already rests on a shaky legal foundation. Any further expansion would likely lead to *all* must-carry rules being struck down.
- Any increase in must-carry burdens takes away valuable cable bandwidth and harms cable operators' ability to deliver services that consumers want -- more HD channels, more VOD, and faster Internet. Increased must-carry burdens could also derail voluntary commitments for cable carriage of multicast broadcast programming (including public broadcasting).
- In sharp contrast to the "dual carriage" Order of last Fall, the proposal would require cable carriage of signals that are *not* currently on cable.

LPTV issues cannot be solved on the backs of cable operators.

- Most LPTV viewers watch these stations over-the-air (using rabbit ears or outdoor antennas), not over cable. Mandatory carriage by cable operators, even if it were legal, would do nothing to help the LPTV stations' current over-the-air viewers.
- There is only one right answer: consumers should buy, and the FCC and LPTV stations should promote, digital broadcast converter boxes that also pass through LPTV stations' analog broadcast signals until such time as LPTV stations have converted to digital.

ATTACHMENT B

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 3, 2006]
[CITE: 47USC534]

TITLE 47--TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5--WIRE OR RADIO COMMUNICATION

SUBCHAPTER V-A--CABLE COMMUNICATIONS

Part II--Use of Cable Channels and Cable Ownership Restrictions

Sec. 534. Carriage of local commercial television signals

(a) Carriage obligations

Each cable operator shall carry, on the cable system of that operator, the signals of local commercial television stations and qualified low power stations as provided by this section. Carriage of additional broadcast television signals on such system shall be at the discretion of such operator, subject to section 325(b) of this title.

(b) Signals required

(1) In general

(A) A cable operator of a cable system with 12 or fewer usable activated channels shall carry the signals of at least three local commercial television stations, except that if such a system has 300 or fewer subscribers, it shall not be subject to any requirements under this section so long as such system does not delete from carriage by that system any signal of a broadcast television station.

(B) A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system.

(2) Selection of signals

Whenever the number of local commercial television stations exceeds the maximum number of signals a cable system is required to carry under paragraph (1), the cable operator shall have discretion in selecting which such stations shall be carried on its cable system, except that--

(A) under no circumstances shall a cable operator carry a qualified low power station in lieu of a local commercial television station; and

(B) if the cable operator elects to carry an affiliate of a broadcast network (as such term is defined by the Commission by regulation), such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in section 76.53 of title 47, Code of Federal Regulations (in effect on January 1, 1991), or any successor regulation thereto, is closest to the principal headend of the cable system.

(3) Content to be carried

(A) A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other material in the vertical blanking interval or other nonprogram-related material (including teletext and other subscription and advertiser-supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost-canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

(B) The cable operator shall carry the entirety of the program schedule of any television station carried on the cable system unless carriage of specific programming is prohibited, and other programming authorized to be substituted, under section 76.67 or subpart F of part 76 of title 47, Code of Federal Regulations (as in effect on January 1, 1991), or any successor regulations thereto.

(4) Signal quality

(A) Nondegradation; technical specifications

The signals of local commercial television stations that a cable operator carries shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.

(B) Advanced television

At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.

(5) Duplication not required

Notwithstanding paragraph (1), a cable operator shall not be required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network (as such term is defined by regulation). If a cable operator elects to carry on its cable system a signal which substantially duplicates the signal of another local commercial television station carried on the cable system, or to carry on its system the signals of more than one local commercial television station affiliated with a particular broadcast network, all such signals shall be counted toward the number of signals the operator is required to carry under paragraph (1).

(6) Channel positioning

Each signal carried in fulfillment of the carriage obligations of a cable operator under this section shall be carried on the cable system channel number on which the local commercial television station is broadcast over the air, or on the channel on which it was carried on July 19, 1985, or on the channel on which it was carried on January 1, 1992, at the election of the station, or on such other channel number as is mutually agreed upon by the station and the cable operator. Any dispute regarding the positioning of a local commercial television station shall be resolved by the Commission.

(7) Signal availability

Signals carried in fulfillment of the requirements of this section shall be provided to every subscriber of a cable system. Such signals shall be viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection. If a cable operator authorizes subscribers to install additional receiver connections, but does not provide the subscriber with such connections, or with the equipment and materials for such connections, the operator shall notify such subscribers of all broadcast stations carried on the cable system which cannot be viewed via cable without a converter box and shall offer to sell or lease such a converter box to such subscribers at rates in accordance with section 543(b)(3) of this title.

(8) Identification of signals carried

A cable operator shall identify, upon request by any person, the signals carried on its system in fulfillment of the requirements of this section.

(9) Notification

A cable operator shall provide written notice to a local commercial television station at least 30 days prior to either deleting from carriage or repositioning that station. No deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations. The notification provisions of this paragraph shall not be used to undermine or evade the channel positioning or carriage requirements imposed upon cable operators under this section.

(10) Compensation for carriage

A cable operator shall not accept or request monetary payment or other valuable consideration in exchange either for carriage of local commercial television stations in fulfillment of the requirements of this section or for the channel positioning rights provided to such stations under this section, except that--

(A) any such station may be required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system;

(B) a cable operator may accept payments from stations which would be considered distant signals under section 111 of title 17 as indemnification for any increased copyright liability

resulting from carriage of such signal; and

(C) a cable operator may continue to accept monetary payment or other valuable consideration in exchange for carriage or channel positioning of the signal of any local commercial television station carried in fulfillment of the requirements of this section, through, but not beyond, the date of expiration of an agreement thereon between a cable operator and a local commercial television station entered into prior to June 26, 1990.

(c) Low power station carriage obligation

(1) Requirement

If there are not sufficient signals of full power local commercial television stations to fill the channels set aside under subsection (b) of this section--

(A) a cable operator of a cable system with a capacity of 35 or fewer usable activated channels shall be required to carry one qualified low power station; and

(B) a cable operator of a cable system with a capacity of more than 35 usable activated channels shall be required to carry two qualified low power stations.

(2) Use of public, educational, or governmental channels

A cable operator required to carry more than one signal of a qualified low power station under this subsection may do so, subject to approval by the franchising authority pursuant to section 531 of this title, by placing such additional station on public, educational, or governmental channels not in use for their designated purposes.

(d) Remedies

(1) Complaints by broadcast stations

Whenever a local commercial television station believes that a cable operator has failed to meet its obligations under this section, such station shall notify the operator, in writing, of the alleged failure and identify its reasons for believing that the cable operator is obligated to carry the signal of such station or has otherwise failed to comply with the channel positioning or repositioning or other requirements of this section. The cable operator shall, within 30 days of such written notification, respond in writing to such notification and either commence to carry the signal of such station in accordance with the terms requested or state its reasons for believing that it is not obligated to carry such signal or is in compliance with the channel positioning and repositioning and other requirements of this section. A local commercial television station that is denied carriage or channel positioning or repositioning in accordance with this section by a cable operator may obtain review of such denial by filing a complaint with the Commission. Such complaint shall allege the manner in which such cable operator has failed to meet its obligations and the basis for such allegations.

(2) Opportunity to respond

The Commission shall afford such cable operator an opportunity

to present data and arguments to establish that there has been no failure to meet its obligations under this section.

(3) Remedial actions; dismissal

Within 120 days after the date a complaint is filed, the Commission shall determine whether the cable operator has met its obligations under this section. If the Commission determines that the cable operator has failed to meet such obligations, the Commission shall order the cable operator to reposition the complaining station or, in the case of an obligation to carry a station, to commence carriage of the station and to continue such carriage for at least 12 months. If the Commission determines that the cable operator has fully met the requirements of this section, it shall dismiss the complaint.

(e) Input selector switch rules abolished

No cable operator shall be required--

- (1) to provide or make available any input selector switch as defined in section 76.5(mm) of title 47, Code of Federal Regulations, or any comparable device; or
- (2) to provide information to subscribers about input selector switches or comparable devices.

(f) Regulations by Commission

Within 180 days after October 5, 1992, the Commission shall, following a rulemaking proceeding, issue regulations implementing the requirements imposed by this section. Such implementing regulations shall include necessary revisions to update section 76.51 of title 47 of the Code of Federal Regulations.

(g) Sales presentations and program length commercials

(1) Carriage pending proceeding

Pending the outcome of the proceeding under paragraph (2), nothing in this chapter shall require a cable operator to carry on any tier, or prohibit a cable operator from carrying on any tier, the signal of any commercial television station or video programming service that is predominantly utilized for the transmission of sales presentations or program length commercials.

(2) Proceeding concerning certain stations

Within 270 days after October 5, 1992, the Commission, notwithstanding prior proceedings to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity, shall complete a proceeding in accordance with this paragraph to determine whether broadcast television stations that are predominantly utilized for the transmission of sales presentations or program length commercials are serving the public interest, convenience, and necessity. In conducting such proceeding, the Commission shall provide appropriate notice and opportunity for public comment. The Commission shall consider the viewing of such stations, the level of competing demands for the spectrum allocated to such stations, and the role of such stations in providing competition to nonbroadcast

services offering similar programming. In the event that the Commission concludes that one or more of such stations are serving the public interest, convenience, and necessity, the Commission shall qualify such stations as local commercial television stations for purposes of subsection (a) of this section. In the event that the Commission concludes that one or more of such stations are not serving the public interest, convenience, and necessity, the Commission shall allow the licensees of such stations a reasonable period within which to provide different programming, and shall not deny such stations a renewal expectancy solely because their programming consisted predominantly of sales presentations or program length commercials.

(h) Definitions

(1) Local commercial television station

(A) In general

For purposes of this section, the term ``local commercial television station'' means any full power television broadcast station, other than a qualified noncommercial educational television station within the meaning of section 535(1)(1) of this title, licensed and operating on a channel regularly assigned to its community by the Commission that, with respect to a particular cable system, is within the same television market as the cable system.

(B) Exclusions

The term ``local commercial television station'' shall not include--

(i) low power television stations, television translator stations, and passive repeaters which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto;

(ii) a television broadcast station that would be considered a distant signal under section 111 of title 17, if such station does not agree to indemnify the cable operator for any increased copyright liability resulting from carriage on the cable system; or

(iii) a television broadcast station that does not deliver to the principal headend of a cable system either a signal level of ≥ 45 dBm for UHF signals or ≥ 49 dBm for VHF signals at the input terminals of the signal processing equipment, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

(C) Market determinations

(i) For purposes of this section, a broadcasting station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns, except that, following a written request, the Commission may, with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section. In considering such

requests, the Commission may determine that particular communities are part of more than one television market.

(ii) In considering requests filed pursuant to clause (i), the Commission shall afford particular attention to the value of localism by taking into account such factors as--

(I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;

(II) whether the television station provides coverage or other local service to such community;

(III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and

(IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.

(iii) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this subparagraph.

(iv) Within 120 days after the date on which a request is filed under this subparagraph (or 120 days after February 8, 1996, if later), the Commission shall grant or deny the request.

(2) Qualified low power station

The term ``qualified low power station'' means any television broadcast station conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations, only if--

(A) such station broadcasts for at least the minimum number of hours of operation required by the Commission for television broadcast stations under part 73 of title 47, Code of Federal Regulations;

(B) such station meets all obligations and requirements applicable to television broadcast stations under part 73 of title 47, Code of Federal Regulations, with respect to the broadcast of nonentertainment programming; programming and rates involving political candidates, election issues, controversial issues of public importance, editorials, and personal attacks; programming for children; and equal employment opportunity; and the Commission determines that the provision of such programming by such station would address local news and informational needs which are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license;

(C) such station complies with interference regulations consistent with its secondary status pursuant to part 74 of title 47, Code of Federal Regulations;

(D) such station is located no more than 35 miles from the cable system's headend, and delivers to the principal headend of the cable system an over-the-air signal of good quality, as determined by the Commission;

(E) the community of license of such station and the franchise area of the cable system are both located outside of the largest 160 Metropolitan Statistical Areas, ranked by

population, as determined by the Office of Management and Budget on June 30, 1990, and the population of such community of license on such date did not exceed 35,000; and

(F) there is no full power television broadcast station licensed to any community within the county or other political subdivision (of a State) served by the cable system.

Nothing in this paragraph shall be construed to change the secondary status of any low power station as provided in part 74 of title 47, Code of Federal Regulations, as in effect on October 5, 1992.

(June 19, 1934, ch. 652, title VI, Sec. 614, as added Pub. L. 102-385, Sec. 4, Oct. 5, 1992, 106 Stat. 1471; amended Pub. L. 104-104, title III, Sec. 301(d)(1), Feb. 8, 1996, 110 Stat. 116.)

References in Text

This chapter, referred to in subsec. (g)(1), was in the original ``this Act'', meaning act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Amendments

1996--Subsec. (h)(1)(C)(i). Pub. L. 104-104, Sec. 301(d)(1)(A), substituted ``by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns,' for ``in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991,'.

Subsec. (h)(1)(C)(iv). Pub. L. 104-104, Sec. 301(d)(1)(B), added cl. (iv) and struck out former cl. (iv) which read as follows: ``In the rulemaking proceeding required by subsection (f) of this section, the Commission shall provide for expedited consideration of requests filed under this subparagraph.''

Effective Date

Section effective 60 days after Oct. 5, 1992, see section 28 of Pub. L. 102-385, set out as an Effective Date of 1992 Amendment note under section 325 of this title.

Application to Pending Requests

Section 301(d)(2) of Pub. L. 104-104 provided that: ``The amendment made by paragraph (1) [amending this section] shall apply to--

``(A) any request pending under section 614(h)(1)(C) of the Communications Act of 1934 (47 U.S.C. 534(h)(1)(C)) on the date of enactment of this Act [Feb. 8, 1996]; and

``(B) any request filed under that section after that date.''

ATTACHMENT C

From the U.S. Code Online via GPO Access
[wais.access.gpo.gov]
[Laws in effect as of January 3, 2006]
[CITE: 47USC336]

TITLE 47--TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5--WIRE OR RADIO COMMUNICATION

SUBCHAPTER III--SPECIAL PROVISIONS RELATING TO RADIO

Part I--General Provisions

Sec. 336. Broadcast spectrum flexibility

(a) Commission action

If the Commission determines to issue additional licenses for advanced television services, the Commission--

(1) should limit the initial eligibility for such licenses to persons that, as of the date of such issuance, are licensed to operate a television broadcast station or hold a permit to construct such a station (or both); and

(2) shall adopt regulations that allow the holders of such licenses to offer such ancillary or supplementary services on designated frequencies as may be consistent with the public interest, convenience, and necessity.

(b) Contents of regulations

In prescribing the regulations required by subsection (a) of this section, the Commission shall--

(1) only permit such licensee or permittee to offer ancillary or supplementary services if the use of a designated frequency for such services is consistent with the technology or method designated by the Commission for the provision of advanced television services;

(2) limit the broadcasting of ancillary or supplementary services on designated frequencies so as to avoid derogation of any advanced television services, including high definition television broadcasts, that the Commission may require using such frequencies;

(3) apply to any other ancillary or supplementary service such of the Commission's regulations as are applicable to the offering of analogous services by any other person, except that no ancillary or supplementary service shall have any rights to carriage under section 534 or 535 of this title or be deemed a multichannel video programming distributor for purposes of section 548 of this title;

(4) adopt such technical and other requirements as may be necessary or appropriate to assure the quality of the signal used to provide advanced television services, and may adopt regulations that stipulate the minimum number of hours per day that such signal must be transmitted; and

(5) prescribe such other regulations as may be necessary for the protection of the public interest, convenience, and necessity.

(c) Recovery of license

If the Commission grants a license for advanced television services to a person that, as of the date of such issuance, is licensed to

operate a television broadcast station or holds a permit to construct such a station (or both), the Commission shall, as a condition of such license, require that either the additional license or the original license held by the licensee be surrendered to the Commission for reallocation or reassignment (or both) pursuant to Commission regulation.

(d) Public interest requirement

Nothing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity. In the Commission's review of any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, the television licensee shall establish that all of its program services on the existing or advanced television spectrum are in the public interest. Any violation of the Commission rules applicable to ancillary or supplementary services shall reflect upon the licensee's qualifications for renewal of its license.

(e) Fees

(1) Services to which fees apply

If the regulations prescribed pursuant to subsection (a) of this section permit a licensee to offer ancillary or supplementary services on a designated frequency--

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

(2) Collection of fees

The program required by paragraph (1) shall--

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this title and the Commission's regulations thereunder; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

(3) Treatment of revenues

(A) General rule

Except as provided in subparagraph (B), all proceeds obtained pursuant to the regulations required by this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31.

(B) Retention of revenues

Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this section and regulating and supervising advanced television services. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis.

(4) Report

Within 5 years after February 8, 1996, the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.

(f) Preservation of low-power community television broadcasting

(1) Creation of class A licenses

(A) Rulemaking required

Within 120 days after November 29, 1999, the Commission shall prescribe regulations to establish a class A television license to be available to licensees of qualifying low-power television stations. Such regulations shall provide that--

(i) the license shall be subject to the same license terms and renewal standards as the licenses for full-power television stations except as provided in this subsection; and

(ii) each such class A licensee shall be accorded primary status as a television broadcaster as long as the station continues to meet the requirements for a qualifying low-power station in paragraph (2).

(B) Notice to and certification by licensees

Within 30 days after November 29, 1999, the Commission shall send a notice to the licensees of all low-power television licenses that describes the requirements for class A designation. Within 60 days after November 29, 1999, licensees intending to seek class A designation shall submit to the Commission a certification of eligibility based on the qualification requirements of this subsection. Absent a material deficiency, the Commission shall grant certification of eligibility to apply for class A status.

(C) Application for and award of licenses

Consistent with the requirements set forth in paragraph (2)(A) of this subsection, a licensee may submit an application for class A designation under this paragraph within 30 days

after final regulations are adopted under subparagraph (A) of this paragraph. Except as provided in paragraphs (6) and (7), the Commission shall, within 30 days after receipt of an application of a licensee of a qualifying low-power television station that is acceptable for filing, award such a class A television station license to such licensee.

(D) Resolution of technical problems

The Commission shall act to preserve the service areas of low-power television licensees pending the final resolution of a class A application. If, after granting certification of eligibility for a class A license, technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary--

(i) to ensure replication of the full-power digital television applicant's service area, as provided for in sections 73.622 and 73.623 of the Commission's regulations (47 CFR 73.622, 73.623); and

(ii) to permit maximization of a full-power digital television applicant's service area consistent with such sections 73.622 and 73.623,

if such applicant has filed an application for maximization or a notice of its intent to seek such maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000. Any such applicant shall comply with all applicable Commission rules regarding the construction of digital television facilities.

(E) Change applications

If a station that is awarded a construction permit to maximize or significantly enhance its digital television service area, later files a change application to reduce its digital television service area, the protected contour of that station shall be reduced in accordance with such change modification.

(2) Qualifying low-power television stations

For purposes of this subsection, a station is a qualifying low-power television station if--

(A)(i) during the 90 days preceding November 29, 1999--

(I) such station broadcast a minimum of 18 hours per day;

(II) such station broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled low-power stations that carry common local programming produced within the market area served by such group; and

(III) such station was in compliance with the Commission's requirements applicable to low-power television stations; and

(ii) from and after the date of its application for a class A license, the station is in compliance with the Commission's operating rules for full-power television stations; or

(B) the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission.

(3) Common ownership

No low-power television station authorized as of November 29, 1999, shall be disqualified for a class A license based on common ownership with any other medium of mass communication.

(4) Issuance of licenses for advanced television services to television translator stations and qualifying low-power television stations

The Commission is not required to issue any additional license for advanced television services to the licensee of a class A television station under this subsection, or to any licensee of any television translator station, but shall accept a license application for such services proposing facilities that will not cause interference to the service area of any other broadcast facility applied for, protected, permitted, or authorized on the date of filing of the advanced television application. Such new license or the original license of the applicant shall be forfeited after the end of the digital television service transition period, as determined by the Commission. A licensee of a low-power television station or television translator station may, at the option of licensee, elect to convert to the provision of advanced television services on its analog channel, but shall not be required to convert to digital operation until the end of such transition period.

(5) No preemption of section 337

Nothing in this subsection preempts or otherwise affects section 337 of this title.

(6) Interim qualification

(A) Stations operating within certain bandwidth

The Commission may not grant a class A license to a low-power television station for operation between 698 and 806 megahertz, but the Commission shall provide to low-power television stations assigned to and temporarily operating in that bandwidth the opportunity to meet the qualification requirements for a class A license. If such a qualified applicant for a class A license is assigned a channel within the core spectrum (as such term is defined in MM Docket No. 87-286, February 17, 1998), the Commission shall issue a class A license simultaneously with the assignment of such channel.

(B) Certain channels off-limits

The Commission may not grant under this subsection a class A license to a low-power television station operating on a channel within the core spectrum that includes any of the 175 additional channels referenced in paragraph 45 of its February 23, 1998, Memorandum Opinion and Order on Reconsideration of the Sixth

Report and Order (MM Docket No. 87-268). Within 18 months after November 29, 1999, the Commission shall identify by channel, location, and applicable technical parameters those 175 channels.

(7) No interference requirement

The Commission may not grant a class A license, nor approve a modification of a class A license, unless the applicant or licensee shows that the class A station for which the license or modification is sought will not cause--

(A) interference within--

(i) the predicted Grade B contour (as of the date of the enactment of the Community Broadcasters Protection Act of 1999 [November 29, 1999], or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or

(ii) (I) the digital television service areas provided in the DTV Table of Allotments; (II) the areas protected in the Commission's digital television regulations (47 CFR 73.622(e) and (f)); (III) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application; and (IV) stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D);

(B) interference within the protected contour of any low-power television station or low-power television translator station that--

(i) was licensed prior to the date on which the application for a class A license, or for the modification of such a license, was filed;

(ii) was authorized by construction permit prior to such date; or

(iii) had a pending application that was submitted prior to such date; or

(C) interference within the protected contour of 80 miles from the geographic center of the areas listed in section 22.625(b)(1) or 90.303 of the Commission's regulations (47 CFR 22.625(b)(1) and 90.303) for frequencies in--

(i) the 470-512 megahertz band identified in section 22.621 or 90.303 of such regulations; or

(ii) the 482-488 megahertz band in New York.

(8) Priority for displaced low-power stations

Low-power stations that are displaced by an application filed under this section shall have priority over other low-power stations in the assignment of available channels.

(g) Evaluation

Within 10 years after the date the Commission first issues additional licenses for advanced television services, the Commission shall conduct an evaluation of the advanced television services program. Such evaluation shall include--

(1) an assessment of the willingness of consumers to purchase

the television receivers necessary to receive broadcasts of advanced television services;

(2) an assessment of alternative uses, including public safety use, of the frequencies used for such broadcasts; and

(3) the extent to which the Commission has been or will be able to reduce the amount of spectrum assigned to licensees.

(h) Provision of digital data service by low-power television stations

(1) Within 60 days after receiving a request (made in such form and manner and containing such information as the Commission may require) under this subsection from a low-power television station to which this subsection applies, the Commission shall authorize the licensee or permittee of that station to provide digital data service subject to the requirements of this subsection as a pilot project to demonstrate the feasibility of using low-power television stations to provide high-speed wireless digital data service, including Internet access to unserved areas.

(2) The low-power television stations to which this subsection applies are as follows:

- (A) KHLN-LP, Houston, Texas.
- (B) WTAM-LP, Tampa, Florida.
- (C) WWRJ-LP, Jacksonville, Florida.
- (D) WVBG-LP, Albany, New York.
- (E) KHHI-LP, Honolulu, Hawaii.
- (F) KPHE-LP (K19DD), Phoenix, Arizona.
- (G) K34FI, Bozeman, Montana.
- (H) K65GZ, Bozeman, Montana.
- (I) WXOB-LP, Richmond, Virginia.
- (J) WIIW-LP, Nashville, Tennessee.

(K) A station and repeaters to be determined by the Federal Communications Commission for the sole purpose of providing service to communities in the Kenai Peninsula Borough and Matanuska Susitna Borough.

- (L) WSPY-LP, Plano, Illinois.
- (M) W24AJ, Aurora, Illinois.

(3) Notwithstanding any requirement of section 553 of title 5, the Commission shall promulgate regulations establishing the procedures, consistent with the requirements of paragraphs (4) and (5), governing the pilot projects for the provision of digital data services by certain low power television licensees within 120 days after the date of enactment of LPTV Digital Data Services Act.\1\ The regulations shall set forth--

\1\ See References in Text note below.

(A) requirements as to the form, manner, and information required for submitting requests to the Commission to provide digital data service as a pilot project;

(B) procedures for testing interference to digital television receivers caused by any pilot project station or remote transmitter;

(C) procedures for terminating any pilot project station or remote transmitter or both that causes interference to any analog or digital full-power television stations, class A television station, television translators or any other users of the core television band;

(D) specifications for reports to be filed quarterly by each low power television licensee participating in a pilot project;

(E) procedures by which a low power television licensee

participating in a pilot project shall notify television broadcast stations in the same market upon commencement of digital data services and for ongoing coordination with local broadcasters during the test period; and

(F) procedures for the receipt and review of interference complaints on an expedited basis consistent with paragraph (5)(D).

(4) A low-power television station to which this subsection applies may not provide digital data service unless--

(A) the provision of that service, including any remote return-path transmission in the case of 2-way digital data service, does not cause any interference in violation of the Commission's existing rules, regarding interference caused by low power television stations to full-service analog or digital television stations, class A television stations, or television translator stations; and

(B) the station complies with the Commission's regulations governing safety, environmental, and sound engineering practices, and any other Commission regulation under paragraph (3) governing pilot program operations.

(5)(A) The Commission may limit the provision of digital data service by a low-power television station to which this subsection applies if the Commission finds that--

(i) the provision of 2-way digital data service by that station causes any interference that cannot otherwise be remedied; or

(ii) the provision of 1-way digital data service by that station causes any interference.

(B) The Commission shall grant any such station, upon application (made in such form and manner and containing such information as the Commission may require) by the licensee or permittee of that station, authority to move the station to another location, to modify its facilities to operate on a different channel, or to use booster or auxiliary transmitting locations, if the grant of authority will not cause interference to the allowable or protected service areas of full service digital television stations, National Television Standards Committee assignments, or television translator stations, and provided, however, no such authority shall be granted unless it is consistent with existing Commission regulations relating to the movement, modification, and use of non-class A low power television transmission facilities in order--

(i) to operate within television channels 2 through 51, inclusive; or

(ii) to demonstrate the utility of low-power television stations to provide high-speed 2-way wireless digital data service.

(C) The Commission shall require quarterly reports from each station authorized to provide digital data services under this subsection that include--

(i) information on the station's experience with interference complaints and the resolution thereof;

(ii) information on the station's market success in providing digital data service; and

(iii) such other information as the Commission may require in order to administer this subsection.

(D) The Commission shall resolve any complaints of interference with television reception caused by any station providing digital data service authorized under this subsection within 60 days after the complaint is received by the Commission.

(6) The Commission shall assess and collect from any low-power television station authorized to provide digital data service under this subsection an annual fee or other schedule or method of payment comparable to any fee imposed under the authority of this chapter on providers of similar services. Amounts received by the Commission under this paragraph may be retained by the Commission as an offsetting collection to the extent necessary to cover the costs of developing and implementing the pilot program authorized by this subsection, and regulating and supervising the provision of digital data service by low-power television stations under this subsection. Amounts received by the Commission under this paragraph in excess of any amount retained under the preceding sentence shall be deposited in the Treasury in accordance with chapter 33 of title 31.

(7) In this subsection, the term ``digital data service'' includes--

(A) digitally-based interactive broadcast service; and

(B) wireless Internet access, without regard to--

(i) whether such access is--

(I) provided on a one-way or a two-way basis;

(II) portable or fixed; or

(III) connected to the Internet via a band allocated to Interactive Video and Data Service; and

(ii) the technology employed in delivering such service, including the delivery of such service via multiple transmitters at multiple locations.

(8) Nothing in this subsection limits the authority of the Commission under any other provision of law.

(i) Definitions

As used in this section:

(1) Advanced television services

The term ``advanced television services'' means television services provided using digital or other advanced technology as further defined in the opinion, report, and order of the Commission entitled ``Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service'', MM Docket 87-268, adopted September 17, 1992, and successor proceedings.

(2) Designated frequencies

The term ``designated frequency'' means each of the frequencies designated by the Commission for licenses for advanced television services.

(3) High definition television

The term ``high definition television'' refers to systems that offer approximately twice the vertical and horizontal resolution of receivers generally available on February 8, 1996, as further defined in the proceedings described in paragraph (1) of this subsection.

(June 19, 1934, ch. 652, title III, Sec. 336, as added Pub. L. 104-104, title II, Sec. 201, Feb. 8, 1996, 110 Stat. 107; Pub. L. 106-113, div. B, Sec. 1000(a)(9) [title V, Sec. 5008(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-595; Pub. L. 106-554, Sec. 1(a)(4) [div. B, title I,

Sec. 143(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A-235.)

References in Text

The date of enactment of LPTV Digital Data Services Act, referred to in subsec. (h)(3), probably means the date of enactment of Pub. L. 106-554, which enacted subsec. (h) of this section, and which was approved Dec. 21, 2000. There is no public law with that short title.

Amendments

2000--Subsecs. (h), (i). Pub. L. 106-554 added subsec. (h) and redesignated former subsec. (h) as (i).

1999--Subsecs. (f) to (h). Pub. L. 106-113 added subsec. (f) and redesignated former subsecs. (f) and (g) as (g) and (h), respectively.

Transition to Digital Television

Pub. L. 107-188, title V, Sec. 531, June 12, 2002, 116 Stat. 695, provided that:

“(a) Pair Assignment Required.--In order to further promote the orderly transition to digital television, and to promote the equitable allocation and use of digital channels by television broadcast permittees and licensees, the Federal Communications Commission, at the request of an eligible licensee or permittee, shall, within 90 days after the date of enactment of this Act [June 12, 2002], allot, if necessary, and assign a paired digital television channel to that licensee or permittee, provided that--

“(1) such channel can be allotted and assigned without further modification of the tables of allotments as set forth in sections 73.606 and 73.622 of the Commission's regulations (47 CFR 73.606, 73.622); and

“(2) such allotment and assignment is otherwise consistent with the Commission's rules (47 CFR part 73).

“(b) Eligible Transition Licensee or Permittee.--For purposes of subsection (a), the term ‘eligible licensee or permittee’ means only a full power television broadcast licensee or permittee (or its successor in interest) that--

“(1) had an application pending for an analog television station construction permit as of October 24, 1991, which application was granted after April 3, 1997; and

“(2) as of the date of enactment of this Act [June 12, 2002], is the permittee or licensee of that station.

“(c) Requirements on Licensee or Permittee.--

“(1) Construction deadline.--Any licensee or permittee receiving a paired digital channel pursuant to this section--

“(A) shall be required to construct the digital television broadcast facility within 18 months of the date on which the Federal Communications Commission issues a construction permit therefore, and

“(B) shall be prohibited from obtaining or receiving an extension of time from the Commission beyond the construction deadline established by paragraph (1).

“(2) Prohibition of analog operation using digital pair.--Any licensee or permittee receiving a paired digital channel pursuant to this section shall be prohibited from giving up its current paired analog assignment and becoming a single-channel broadcaster and operating in analog on such paired digital channel.

``(d) Relief Restricted.--Any paired digital allotment and assignment made under this section shall not be available to any other applicant unless such applicant is an eligible licensee or permittee within the meaning of subsection (b).''

Reports on Provision of Digital Data Service by Low-Power Television Stations

Pub. L. 106-554, Sec. 1(a)(4) [div. B, title I, Sec. 143(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-238, provided that: ``The Federal Communications Commission shall submit a report to the Congress on June 30, 2001, and June 30, 2002, evaluating the utility of using low-power television stations to provide high-speed digital data service. The reports shall be based on the pilot projects authorized by section 336(h) of the Communications Act of 1934 (47 U.S.C. 336(h)).''

Congressional Findings Regarding Low-Power Broadcasters

Pub. L. 106-113, div. B, Sec. 1000(a)(9) [title V, Sec. 5008(b)], Nov. 29, 1999, 113 Stat. 1536, 1501A-594, provided that: ``Congress finds the following:

``(1) Since the creation of low-power television licenses by the Federal Communications Commission, a small number of license holders have operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available.

``(2) These low-power broadcasters have operated their stations in a manner consistent with the programming objectives and hours of operation of full-power broadcasters providing worthwhile services to their respective communities while under severe license limitations compared to their full-power counterparts.

``(3) License limitations, particularly the temporary nature of the license, have blocked many low-power broadcasters from having access to capital, and have severely hampered their ability to continue to provide quality broadcasting, programming, or improvements.

``(4) The passage of the Telecommunications Act of 1996 [Pub. L. 104-104, see Short Title of 1996 Amendment note set out under section 609 of this title] has added to the uncertainty of the future status of these stations by the lack of specific provisions regarding the permanency of their licenses, or their treatment during the transition to high definition, digital television.

``(5) It is in the public interest to promote diversity in television programming such as that currently provided by low-power television stations to foreign-language communities.''

Executive Order No. 13038

Ex. Ord. No. 13038, Mar. 11, 1997, 62 F.R. 12065, as amended by Ex. Ord. No. 13062, Sec. 5, Sept. 29, 1997, 62 F.R. 51756; Ex. Ord. No. 13065, Oct. 22, 1997, 62 F.R. 55329; Ex. Ord. No. 13081, Apr. 30, 1998, 63 F.R. 24385; Ex. Ord. No. 13102, Sept. 25, 1998, 63 F.R. 52125, which established the Advisory Committee on the Public Interest Obligations of Digital Television Broadcasters, was revoked by Ex. Ord. No. 13138, Sec. 3(b), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

ATTACHMENT D

Before the
Federal Communications Commission
Washington, D.C. 20554

| | | |
|----------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| Establishment of a Class A |) | MM Docket No. 00-10 |
| Television Service |) | |
| |) | |
| |) | |
| |) | |
| |) | |

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

Adopted: April 5, 2001

Released: April 13, 2001

By the Commission:

TABLE OF CONTENTS

| <u>Heading</u> | <u>Paragraph</u> |
|---|------------------|
| I. INTRODUCTION | 1 |
| II. BACKGROUND | 2 |
| III. ISSUE ANALYSIS | 10 |
| A. Certification and Application for License | 10 |
| 1. Statutory Time Frames | 10 |
| 2. Ongoing Eligibility | 15 |
| B. Qualifying Low-Power Television Stations | 19 |
| 1. Locally-Produced Programming | 19 |
| 2. Operating Requirements | 25 |
| 3. Mandatory Carriage | 37 |
| 4. Alternative Eligibility Criteria | 44 |
| C. Class A Interference Protection Rights and Responsibilities | 49 |
| 1. Protection of Pending NTSC TV Applications and Facilities | 49 |
| 2. DTV Maximization and Allotment Adjustments | 61 |
| D. Methods of Interference Protection to Class A Facilities | 69 |
| 1. Analog Full-Service TV Protection to Analog Class A – Frequency Offset | 69 |
| 2. Alternative Means of Interference Protection | 76 |

permit Class A television stations that convert to digital operation to "offer telecommunications services of any nature, consistent with the public interest, convenience and necessity, on an ancillary or supplementary basis" in the same manner as full power DTV stations.⁷⁸ In this regard, digital Class A stations must broadcast a free over-the-air video program service at least comparable to NTSC technical quality under the digital transmission standard applicable to full service stations.⁷⁹ Such services will be subject to the fees due under Section 73.624(g) and be subject to the same requirement that they not derogate the free over-the-air video program stream required of digital broadcasters. Taking this action furthers the Commission's goal of encouraging the transition of television broadcasting from analog to digital operation. By enabling Class A stations to generate additional revenues from ancillary or supplementary services, we seek to encourage the early conversion of Class A stations from analog to digital operation. Accordingly, Sections 73.624(c) and (g) will apply to Class A television stations converting to digital operations. Section 73.624(b) will apply only to the extent that such stations must also transmit at least one over-the-air video program signal at no direct charge to viewers of the digital Class A station.

3. Mandatory Carriage

37. In our *Report and Order*, we stated "[n]othing in this *Report and Order* is intended to affect a Class A LPTV station's eligibility to qualify for mandatory carriage under 47 U.S.C. § 534."⁸⁰ PAI contends that the statutory language directing that Class A licensees be "subject to the same license terms and renewal standards as the licenses for full-power television stations" indicates congressional intent to confer on Class A stations all the rights associated with primary status, including the same mandatory carriage rights on area cable and satellite systems as full service television broadcast stations.⁸¹ In addition, PAI urges the Commission to reconsider its decision not to include Class A stations in the NTSC and DTV Tables of Allotments in Part 73 because such action precludes Class A stations from mandatory cable and satellite carriage.

38. As PAI explains, under Section 614(a) of the Communications Act of 1934, as amended, cable operators are required to carry the signals of "local commercial television stations."⁸² Section 614(h)(1)(A) defines a "local commercial television station" as "any full power television broadcast station ... licensed and operating on a channel regularly assigned to its community by the Commission that ... is within the same television market as the cable system."⁸³ Thus, according to PAI, because the Commission excluded Class A stations from the Table of Allotments in subpart E of Part 73, they are not eligible for mandatory cable and satellite carriage. PAI acknowledges there may be technical reasons to exclude Class A licensees from compliance with the NTSC and DTV Tables of Allotments, but urges the Commission to amend the requirements of the Table of Allotments for Class A stations or to make such stations *de facto* members under the tables to ensure they are accorded the same rights as other primary television

⁷⁸ 47 U.S.C. § 73.624(c).

⁷⁹ See 47 C.F.R. § 73.682(d).

⁸⁰ *Report and Order* at ¶ 31, note 61.

⁸¹ PAI Petition for Reconsideration, or Alternatively, for Clarification at 5 ("PAI Petition"); PAI Reply to NCTA Opposition to Petition for Reconsideration at 2 ("PAI Reply").

⁸² 47 U.S.C. § 534(a).

⁸³ 47 U.S.C. § 534(h)(1)(A).

broadcasters.

39. We disagree with PAI that Congress intended that Class A stations have the same must carry rights as full-service television broadcast stations under Part 73. Both the language of the CBPA and the accompanying conference report are silent with respect to the issue of must carry rights for Class A stations.⁸⁴ We agree with NCTA, which filed an Opposition to the PAI Petition, that it is unlikely that Congress intended to grant Class A stations full must carry rights, equivalent to those of full-service stations, without addressing the issue directly. NCTA argues that it is "inconceivable" that Congress would make such a significant change in the must carry requirements "*sub silentio*."⁸⁵

40. Our conclusion with respect to Class A must carry rights is consistent with the view recently expressed by the Commission in its *Report and Order* implementing the Satellite Home Viewer Improvement Act of 1999.⁸⁶ In that Order, the Commission concluded that Class A stations are low power stations for mandatory carriage purposes, and are therefore not entitled to mandatory satellite carriage.⁸⁷ In light of this determination, we decline to amend the Table of Allotments or grant the other relief sought by PAI.

41. As NCTA also points out in its Opposition, Section 614 establishes two separate sets of must carry eligibility requirements – one for local commercial television stations and one for "qualified low power stations." PAI argues that Class A stations should be treated as "local commercial television stations." However, we agree with NCTA that the statute defines that term to include only "full power" stations, while Class A stations, like LPTV stations, operate at low power.⁸⁸ Moreover, Section 614(h)(1)(B) expressly excludes from the definition of "local commercial television stations" any low power television stations "which operate pursuant to part 74 of title 47, Code of Federal Regulations, or any successor regulations thereto."⁸⁹

42. We believe that Congress intended that Class A stations have the same limited must carry rights as LPTV stations. As noted above, Section 614(a) of the Communications Act, as amended, requires the

⁸⁴ NCTA points out a single reference to must carry in the legislative history contained in a letter from the President, Houston Valley Broadcasting Corporation, to the Hon. W.J. "Billy" Tauzin, Chairman, Subcommittee on Telecommunications, Trade, and Consumer Protection. See Opposition of the National Cable Television Association to Petition for Reconsideration, MM Docket No. 00-10, July 7, 2000, at p. 6, note 20 ("NCTA Opposition").

⁸⁵ NCTA Opposition at 6.

⁸⁶ *Report and Order, In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues, Retransmission Consent Issues*, CS Docket Nos. 00-96 and 99-363, FCC 00-417 (rel. November 30, 2000) ("*SHVIA Report and Order*").

⁸⁷ *SHVIA Report and Order* at ¶ 137 ("[t]he CBPA did not create a new class of television stations eligible for full-fledged carriage rights on cable systems or satellite carriers.")

⁸⁸ *Id.* See NCTA Opposition at 2-3.

⁸⁹ 47 U.S.C. § 534(h)(1)(B)(i). PAI asserts that Class A stations operate pursuant to Part 73 and that Part 73 is not a successor regulation to Part 74. PAI Petition at 4, note 1. However, we agree with NCTA that the new Part 73 rules for Class A stations are more properly viewed as "successor regulations" for the group of Class A LPTV stations previously regulated under Part 74. See NCTA Opposition at 3-4.

carriage of local television broadcast stations and "qualified" low power television stations in certain limited circumstances. Section 614(h)(2) defines the term "qualified low power station" as any television broadcast station "conforming to the rules established for Low Power Television Stations contained in part 74 of title 47, Code of Federal Regulations" that complies with the other criteria established in that section.⁹⁰ Thus, to be eligible for must carry, Class A stations, like other low power television stations, must comply with the Part 74 rules and the other eligibility criteria established by statute and our rules.⁹¹

43. Just as it is unreasonable to conclude that Congress intended to confer on Class A stations the same must carry rights as full-service stations without addressing this issue directly in the CBPA, we also believe that it is unlikely that Congress intended to take away from LPTV stations their existing must carry rights if they elect to convert to Class A. The principal intent of the CBPA was to provide additional certainty to LPTV stations during the digital transition and to alleviate the limitations that "secondary service" imposed on the ability of these stations to attract capital and to continue to provide high quality broadcast programming. Given the severe impact loss of must carry rights would impose on Class A stations who enjoyed these rights as LPTV stations, we conclude it is unlikely that Congress intended to remove these rights without specific mention in the CBPA.

4. Alternative Eligibility Criteria

44. Section (f)(2)(A) of the CBPA defines the eligibility criteria for Class A stations.⁹² Section (f)(2)(B) provides that a station may also qualify for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."⁹³

In the *Report and Order*, we said we would "allow deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation."⁹⁴ We gave as an example of such compelling circumstances "a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA."⁹⁵ We also concluded that

⁹⁰ 47 U.S.C. § 534(h)(2). Under Section 76.56(b)(3) of the Commission's rules, promulgated pursuant to Section 614, a cable system that has insufficient full power television stations to reach its channel set aside under the Act shall carry at least one qualified LPTV station.

⁹¹ See, e.g., *Central Ohio Association of Christian Broadcasters, Inc. v. Time Warner Cable*, DA 00-2632, 2000 WL 1727376 (Chief, Consumer Protection and Competition Division, Cable Services Bureau) (rel. Nov. 22, 2000); *Complaint of V-One Productions, Inc. Against Charter Cable*, DA 00-1646, 2000 WL 1015240 (Chief, Consumer Protection and Competition Division, Cable Services Bureau) (rel. July 24, 2000); *Complaint of Vision 3 Broadcasting, Inc. Against Time Warner Cable*, DA 99-2683, 14 FCC Rcd 20,632 (Deputy Chief, Cable Services Bureau 1999); *Complaint of American Television, Inc. Against Charter Communications, LLC for Carriage of WSTY-LP, Hammond, Louisiana*, DA 99-1041 14 FCC Rcd 8842 (Chief, Consumer Protection and Competition Division, Cable Services Bureau 1999).

⁹² For the 90 days prior to enactment of the CBPA, an applicant must have (1) broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. 47 U.S.C. § (f)(2)(A).

⁹³ 47 U.S.C. § 336(f)(2)(B).

⁹⁴ *Report and Order* at ¶ 33.

ATTACHMENT E

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

| | | |
|---|---|------------------|
| In the matter of |) | |
| |) | |
| Promoting Diversification of Ownership in |) | MB Docket 07-294 |
| the Broadcasting Services |) | |
| |) | |

To The Commission

**INITIAL COMMENTS OF THE DIVERSITY AND COMPETITION SUPPORTERS IN
RESPONSE TO THE THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

David Honig
Executive Director
Joycelyn James
John W. Jones Fellow
Joseph Miller
Earle K. Moore Fellow
Minority Media and Telecommunications Council
3636 16th Street, N.W.
Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@crosslink.net

Counsel for the Diversity and Competition Supporters

Of Counsel:

Joy Tate
Associate Broker
Minority Media and
Telecommunications Council

July 30, 2008

promoting minority ownership; and (3) building the LPFM service. The Commission should consider this proposal immediately.

VII. Must-Carry for Certain Class A Television Stations

In its Supplemental Reply Comments, DCS endorsed the Community Broadcasters Association's proposal for the Commission to support cable must-carry legislation for Class A stations.⁸³ Class A low power television (LPTV) stations are required to originate local programming.⁸⁴ Approximately 15% of Class A stations are minority owned and many provide multicultural and multilingual service that is not available from full-power stations.⁸⁵

DCS takes this opportunity to refine its position on Class A must carry. DCS is mindful of the unintended consequences that blanket Class A must-carry would impose on cable systems that may have limited capacity. Many – perhaps most – Class A stations broadcast only minimal local programming and no multicultural or multilingual programming, and thus offer the public little in the way of diversity of viewpoints and information. As such, the public would be better served if the Commission would create and entitle to must-carry a new sub-class of Class A stations that are hyper-local or that provide extensive multicultural and (especially) multilingual service.

VIII. Reallocation of TV Channels 5 and 6 for FM Service

Among all of the proposals adopted or under consideration in this docket, this proposal, advanced in 2007 by Mullaney Engineering, Inc. ("Mullaney Plan")⁸⁶ has the greatest potential to

⁸³ See DCS 2007 Supp. Comments at 10.

⁸⁴ See 47 U.S.C. §336(f)(2)(A)(i).

⁸⁵ See DCS 2007 Supp. Comments at 10 (citing and attaching, in Appendix D, the Declaration of Rosamaria Caballero, President, Caballero Television Texas LLC (November 12, 2007)).

⁸⁶ DCS 2007 Supp. Comments at 11 (citing Mullaney Engineering, Inc. Petition for Reconsideration and/or Comment, MM Docket No. 87-268, October 26, 2007).

APPENDIX

THE DIVERSITY AND COMPETITION SUPPORTERS (DCS)

Alliance for Community Media
American Indians in Film and Television
Asian American Justice Center
Black College Communication Association
Center for Asian American Media
Independent Spanish Broadcasters Association
International Black Broadcasters Association
Latinos in Information Sciences and Technology Association
League of United Latin American Citizens
Minorities and Communication Division of the Association for Education in Journalism and
Mass Communications
Minority Business Enterprise Legal Defense and Education Fund
Minority Media and Telecommunications Council
Multicultural Broadband Trade Association
National Association of Black Owned Broadcasters
National Association of Black Telecommunications Professionals
National Association of Hispanic Publications Foundation
National Association of Latino Independent Producers
National Coalition of Hispanic Organizations
National Congress of American Indians
National Council of Churches
National Council of La Raza
National Hispanic Media Coalition
National Indian Telecommunications Institute
National Institute for Latino Policy
National Puerto Rican Coalition
National Urban League
Native American Public Telecommunications, Inc.
Puerto Rican Legal Defense and Education Fund
Rainbow/PUSH Coalition
UNITY: Journalists of Color, Inc.
Women's Institute for Freedom of the Press

ATTACHMENT F

WILLKIE FARR & GALLAGHER^{LLP}

1875 K Street, NW
Washington, DC 20006

Tel: 202 303 1000
Fax: 202 303 2000

December 11, 2007

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, D.C. 20554

Re: *Carriage of Digital Television Broadcast Signals: Amendment of Part 76 of the Commission's Rules*, CS Docket No. 98-120

Dear Ms. Dortch:

This letter reports for the record in the above-captioned proceeding a series of meetings that representatives of Comcast Corporation ("Comcast") had on December 10, 2007 with Rick Chessen, Senior Legal Advisor to Commissioner Michael Copps, Cristina Chou Pauzé, Legal Advisor for Media Issues to Commissioner Robert McDowell, and Rudy Brioché, Legal Advisor for Media Issues to Commissioner Jonathan Adelstein, and a telephone conversation on December 11, 2007 with Amy Blankenship, Legal Advisor to Commissioner Deborah Taylor Tate. Comcast was represented during each of these discussions by James R. Coltharp and Mary P. McManus of Comcast and the undersigned. In each of these conversations, we highlighted key arguments that Comcast has already presented on the record regarding the undesirability as a matter of policy and the impermissibility as a matter of law of any further expansion of must-carry requirements. We also referenced some of the quotations collected in the attached document.

This ex parte letter is submitted pursuant to Section 1.1200 *et seq.* of the Federal Communications Commission's rules. Please let me know if you have any questions.

Sincerely,

/s/ James L. Casserly
James L. Casserly

Attachment

Marlene H. Dortch
December 11, 2007
Page 2

cc: Amy Blankenship
Rudy Brioché
Rick Chessen
Cristina Chou Pauzé

Multicast Must-Carry: What Are Others Saying?

“Adding multicast must-carry would **inappropriately reserve yet more valuable ‘shelf space’** on cable systems for some privileged parties at the expense of other video programming and additional voice and broadband services that may have stronger consumer demand.”

*Joe Barton, Ranking Member, and 23 Members of the House Committee on Energy and Commerce,
Nov. 20, 2007*

“[Y]ou have **presented no evidence** to support your assertion that multicast must-carry would promote program diversity and increase programming choices for consumers. In fact, we think it would have the opposite effect by putting additional broadcast channels at the front of the line ahead of the many diverse programming services offered by cable.”

Letter from Eleven Members of the House of Representatives to Chairman Martin, Nov. 26, 2007

“[The proposal] was an obvious effort to provide cover for more media consolidation, which would only have take media outlets further out of the reach of women and minorities . . . **Media sharecropping** is no substitute for media ownership. Given the crisis we face in ownership, we need real actions, not just **token gestures**. We need to heed the many calls from Congress and diverse voices across America who are demanding we act to improve women and minority ownership before, not after, we vote on media ownership rules.”

Commissioner Jonathan S. Adelstein, Nov. 27, 2007

“The Chairman’s proposal to allow minority programmers to ‘lease’ surplus broadcast spectrum on channels covered by must carry rules would create **yet another category of government-preferred speakers** who would get in line for carriage ahead of services like ours.”

The Africa Channel, TV One, and American Life TV Network, Nov. 20, 2007

“[M]ost in the minority and civil rights community feel that the Commission’s close-fisted offer to rent channel space on broadcast TV as it simultaneously shuts down minority ownership on cable is a **patronizing slap in the face**.”

Rev. Miguel Rivera, President, National Coalition of Latino Clergy & Christian Leaders, Oct. 18, 2007

“[T]his proposal is regarded by many as a **poor ‘consolation’ prize** for what is widely considered to be an ‘anti-diversity’ agenda emanating from the FCC . . . [M]inority broadcasters seek an opportunity for programming ownership, not the subordinate position of merely renting some space on must-carry channels . . . The result would be that more *non-minority* broadcast channels, under the ultimate control of the same broadcasters who control the airwaves today, would get must-carry status, with the effect of **squeezing out the precious channel space that would otherwise be available to prospective minority, women’s and other emerging cable and satellite programmers**.”

“[T]he FCC is proposing what appears to be a massive new and unjustified **‘welfare for the rich’** program...”

“If the leasing proposal was the only available avenue for aspiring minority broadcasters, then it might be worth a second-look. But it is not . . . For the Commission to think that minority broadcasters are entitled only to ‘lease’ some of [the] space from incumbent broadcasters is to **relegate our communities to ‘second class’ status**...”

“The reality is that most programmers want the opportunity for ownership and not the **‘crumbs from the table.’** While innovative new networks would die in this stifling environment, channels like home shopping networks and infomercial networks would benefit most.”

*Rev. Jesse L. Jackson, Sr., Founder and President, Rainbow PUSH Coalition,
Oct. 30, 2007 and Nov. 30, 2007*

ATTACHMENT G

In the Matter of)
)
DTV Consumer Education Initiative) **MB Docket No. 07-148**
)

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

2. The purpose of the Commission's proposed consumer education initiative is to increase public awareness of the fact that the transition of television broadcasting from analog to digital operation will conclude on February 17, 2009. However, that deadline applies to only full power television stations. Class A and LPTV stations are not subject to the deadline, nor are TV Translators, all of which may choose to continue to provide analog service. To disseminate information that ignores the fact that analog service will continue to be available will both mislead the public and be detrimental to Class A and LPTV stations, which for the most part do not enjoy cable and satellite distribution and depend on over-the-air reception to reach their viewers.

3. Class A, LPTV, and TV Translator analog services are explicitly not required to terminate by February 17, 2009. The fixed deadline is specified by statute, and the statute does

not impose the deadline on Class A, LPTV, or TV Translator stations.¹ Indeed, Class A, LPTV stations, and TV Translators could not possibly complete a migration to digital operation by February 17, 2009, because it was not until June 19, 2006, that the Commission opened the only filing window for these stations to file applications for digital companion channels,² and it is only recently that the Commission started issuing digital companion construction permits.³ Virtually all Class A and LPTV digital companion channel construction permits do not expire until after February 17, 2009, and the Commission cannot expect Class A and LPTV stations to construct digital facilities in less time than was afforded to the wealthier full power television industry. These stations will transition to digital operation in due course, but after the time when full power analog service terminates.

4. Because only Class A and LPTV stations that both operate in communities outside the top 160 Metropolitan Statistical Areas and in counties with no full power TV service have mandatory cable carriage rights,⁴ most Class A and LPTV stations rely almost exclusively on over-the-air reception to reach their audiences. They thus have the greatest stake of any TV broadcasters in the public's accurate understanding of over-the-air antenna reception technology, the availability of over-the-air services, and what will happen on February 17, 2009.

¹ See fn. 1 of the NPRM, citing the *Deficit Reduction Act of 2005*, which establishes a termination deadline for each "full-power television broadcast license that authorizes analog television service" and does not refer to Class A or LPTV stations.

² See Public Notice DA 06-874, released April 20, 2006. Some applications have been granted for Class A and LPTV stations to flash cut to digital operation on their analog channel, but these grants are relatively few in number.

³ Hundreds of companion channel applications also remain pending, with the Commission's ability to take innovative steps to eliminate mutual exclusivity limited by statutory auction requirements.

⁴ See Sec. 614(h)(2) of the Communications Act, 47 CFR Sec. 534(h)(2).